

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

WILLIE CUNNINGHAM,

Petitioner,

-vs-

ROB JEFFRIES, Warden,

Respondent.

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Case No. 3:05-cv-208

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District Judge Thomas M. Rose  
Chief Magistrate Judge Michael R. Merz

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**REPORT AND RECOMMENDATIONS TO DENY LEAVE TO APPEAL IN FORMA  
PAUPERIS; ORDER DENYING APPOINTMENT OF COUNSEL FOR APPEAL**

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This habeas corpus action is before the Court on Petitioner's Motion for Leave to Appeal *in forma pauperis* (Doc. No. 13) and Motion to Appoint Counsel on Appeal (Doc. No. 15).

Petitioner's Notice of Appeal is premature because District Judge Rose has not yet acted on the Magistrate Judge's Report and Recommendations and Supplemental Report and Recommendations in this case. The Court of Appeals only has jurisdiction over appeals from final judgments and there is not yet any final judgment in this case. Therefore, there is no possibility of an appeal at this time, although Petitioner certainly has the right to file objections to the Supplemental Report.

Therefore, Petitioner's Motion for Appointment of Counsel is DENIED and it is respectfully recommended that his Motion for Leave to Appeal *in forma pauperis* be DENIED.

August 3, 2005.

s/ **Michael R. Merz**  
Chief United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6<sup>th</sup> Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).